Supreme Court, U.S.
FILED
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No. 99-805

In the
Supreme Court of the United States

EDWARD M. MITCHELL,
Petitioner,

v.

TOTAL ACTION AGAINST POVERTY
IN ROANOKE VALLEY/HEAD START,
Respondent.

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

RESPONDENT TOTAL ACTION AGAINST POVERTY IN ROANOKE VALLEY/HEAD START'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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December 9, 1999

QUESTIONS PRESENTED FOR REVIEW

1. Did Petitioner present sufficient evidence to make out a *prima facie* case of sexual discrimination?

2. Did Petitioner present sufficient evidence of retaliatory discharge?

3. Does Petitioner present any evidence of "bias in the way the United States District Court for the Western District of Virginia, Roanoke Division and the United States Court of Appeals for the Fourth Circuit look at sexual discrimination cases involving men as opposed to women?"

STATEMENT OF PARTIES

The petitioner is Edward M. Mitchell, plaintiff in the district Court and appellant before the Court of Appeals.

The Respondent is Total Action Against Poverty in Roanoke Valley/Head Start, which has no parent corporation, is not publicly traded, and is not a parent, subsidiary or affiliate of, or a trade association representing a publicly held corporation, or other publicly held entity.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
STATEMENT OF PARTIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
REASONS FOR DENYING THE PETITION	2
1. The Issues are Entirely Factbound	2
2. Petitioner's Questions Presented of Bias are Without Foundation, Argumentative and Frivolous	5
MOTION FOR SANCTIONS	5
CONCLUSION	6

TABLE OF AUTHORITIES

Page

Cases

McDonnell Douglas Corp. v. Green, 411 U.S., 792 (1973) 2, 3

STATEMENT OF THE CASE

This petition is the latest attempt by the petitioner to prolong a suit which has no merit to it.

Petitioner's claims of sexual discrimination and retaliatory discharge have been considered and rejected by the Equal Employment Opportunity Commission on June 6, 1996, by the United States District Court for the Western District of Virginia in a Memorandum Opinion and Order dated September 11, 1998, by the United States Court of Appeals for the Fourth Circuit in a *per curiam* opinion by Judges Wilkins, Luttig and Michael dated April 20, 1999, and again by the Court of Appeals' denial of a rehearing on June 1, 1999.

All administrative agencies and courts who have duly considered petitioner's allegations of sexual discrimination and retaliatory discharge have uniformly found no evidence in support of these allegations.

Petitioner's newly formulated issues alleging that the United States District Court for the Western District of Virginia (whose Judges are all male) and the United States Court of Appeals for the Fourth Circuit (whose panel was all male) are biased against men is preposterous and unsupported by a scintilla of evidence nor is it even argued.

SUMMARY OF ARGUMENT

The United States Court of Appeals for the Fourth Circuit correctly affirmed the granting of summary judgment against the petitioner by the United States District Court for the Western District of Virginia.

The petitioner offered no direct evidence of sexual discrimination nor was he able to rely upon the indirect, burden shifting method of proof developed in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as he was replaced by a member of the same sex (male).

The petitioner also failed to produce any evidence that he engaged in any protected activity before his termination. Moreover, petitioner failed to show that he was performing his duties in a satisfactory manner.

REASONS FOR DENYING THE PETITION

1. THE ISSUES ARE ENTIRELY FACTBOUND

Petitioner's claim of sexual discrimination and retaliatory discharge were determined by the District Court on the facts as submitted to it.

Petitioner presents no questions that suggest that the United States Court of Appeals for the Fourth Circuit has entered a decision in conflict with another United States Court of Appeals, nor decided a case in conflict

with a State Court of last resort, nor departed from the usual course of judicial proceedings nor affirmed a lower court's departure from the usual course of judicial proceedings. The District Court and the Court of Appeals merely applied the established law to the submitted facts.

As the United States District Court for the Western District of Virginia noted in its Memorandum Opinion of September 11, 1998, petitioner submitted no direct evidence of discrimination and could not avail himself of the indirect proof scheme set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as petitioner (a male) was replaced by another male.

Although petitioner challenged this rigid application of the indirect scheme of proof when he appealed to the Court of Appeals, under any scheme of proof, petitioner failed to produce any evidence of discrimination. He instead relied on conjecture, speculation and a degree of silly, yet insulting and argumentative assertions. A sample of this type of empty yet disturbing argument was contained in, but not confined to, the Reply Brief petitioner filed in the Court of Appeals:

> Secondly, if a Caucasian person stated in the work place that "All blacks are dogs" or "Blacks are harder to deal with than whites," the African-American, bringing a suit for race discrimination, would surely

> not be accused of "being too sensitive" as Judge Turk said to Appellant at the hearing on Appellee's Motion for Summary Judgment, and surely Appellee would not be labeling these comments as mere office banter. Let us not be sexist in the way we treat a man who brings a claim of gender discrimination by treating his claim differently that we would any other discrimination claim and by expecting him to have thicker skin merely because he is a man. (Reply Brief of Appellant, p.5-6)

Accordingly, the Court of Appeals correctly affirmed the District Court's finding that petitioner failed to make out a *prima facie* case or raise even an inference of illegal discrimination or show he was performing his duties in a satisfactory manner.

Similarly, the retaliation claim was dismissed by the District Court in its granting of summary judgment against the petitioner as the result of a lack of facts. Not only did petitioner fail to prove that he was engaged in a protected activity before he was terminated, he never demonstrated that he was performing his duties in a satisfactory manner.

2. PETITIONER'S QUESTIONS PRESENTED OF BIAS ARE WITHOUT FOUNDATION, ARGUMENTATIVE AND FRIVOLOUS

Without a scintilla of evidence, petitioner presents to this Court for consideration the questions of the bias of the United States District Court for the Western District of Virginia, Roanoke Division and that of the United States Court of Appeals for the Fourth Circuit. The question presented is that these male populated courts are biased against males in their decisions of sexual discrimination cases.

No facts are submitted in support of this absurd and novel argument. No statistics are submitted. Petitioner only submits the insulting and contemptuous assertion that the District Court and Court of Appeals are biased. Such empty and frivolous arguments should be sanctioned pursuant to Rule 42.2 of the Rules of the Supreme Court of the United States.

MOTION FOR SANCTIONS

Respondent respectfully moves this Court to sanction petitioner for presenting a frivolous and contemptuous petition to this Court.

CONCLUSION

The petition for a Writ of Certiorari should be denied and costs awarded to respondent pursuant to Rules 42.2 and 43 of the Rules of the Supreme Court of the United States.

DATED: December 9, 1999

Respectfully submitted,

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Attorney for Respondent
Total Action Against Poverty in
Roanoke Valley/Head Start

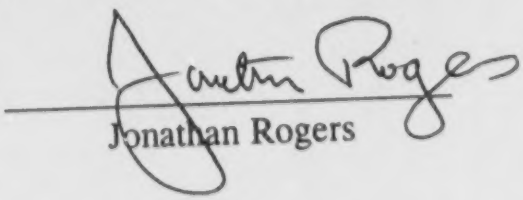
CERTIFICATE OF FILING

I hereby certify that the original and forty (40) copies of the foregoing Respondent Total Action Against Poverty in Roanoke Valley/Head Start's Brief in Opposition to Petition for Writ of Certiorari was sent via Federal Express to the United States Supreme Court this 9th day of December, 1999.

Jonathan Rogers

CERTIFICATE OF MAILING

I hereby certify that three copies of the foregoing Respondent Total Action Against Poverty in Roanoke Valley/Head Start's Brief in Opposition to Petition for Writ of Certiorari was sent via United States mail to Edward M. Mitchell, 1570 16th Street, NW, Roanoke, VA 24017, this 9th day of December, 1999.



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